

Declaration of Carolyn B. Frye

I, Carolyn B. Frye, being at least 21 years old and a citizen of the United States, do hereby declare under penalty of perjury as follows:

1. I am a communications consultant in management with the firm: RAM Technologies, Inc. and directly responsible for

Declaration of Carolyn B. Frye (continued)

5. I asked Doug Thomas if he had any problem with sending me a letter covering his conversation with Rusty Harris. He stated he would ge it out to me on Friday, March 2, 1990.
6. He reiterated to me he considered these remarks to be a threat to Ram and he would not be involved in it. And.

EXHIBIT FOUR

Carolyn Moyer
Ram Technologies
930 6th Avenue
Huntington, WV 25701

March 2, 1990

Dear Carolyn,

This is to advise you of the conversation Mr. Thomas and I had with Mr. Rusty Harrison of Capitol paging on March 1, 1990 at approximately 3:30pm in Mr. Thomas's office here at Tri-City Answering Service.

We were conversing about the differences between Rampage pagers and those offered by the company he represents. In his explanations, he informed Mr. Thomas and I that his company's intentions were to apply to share the frequency used by Rampage and 6 other companies including Ashland Oil. He said they will purchase the licence for \$365.00, buy 200 pagers and rent them for \$2-3.00 apiece. He said these pagers will be routed through the aforementioned frequency for the purpose

DECLARATION OF ROBERT A. MOYER, JR.

DECLARATION OF ROBERT A. MOYER, JR.

I, Robert A. Moyer, Jr., being at least 21 years of age, do hereby declare that

[REDACTED]

Declaration of Debbie Paugh

I, Debbie Paugh, being of at least 21 years of age and a citizen of the United States, do hereby declare under penalty of perjury as follows:

I am an employee for RAM-PAGE in Huntington, West Virginia. Mr. Jim McClure of Little Seven Mile Auto Parts related the following to me on 2/7/90.

Capitol went in to try and get Little Seven Mile Auto Parts
~~parts book. she said that we didn't have the parts that I had~~

Declaration of Debbie Paugh

I, Debbie Paugh, being of at least 21 years of age and a citizen of the United States, do hereby declare under penalty of perjury as follows:

I am an employee for RAM-PAGE in Huntington, West Virginia. Mr. Sgt. Wendell Adkins of the Huntington Police Department Drug Unit related the following to me on 2/7/90.

Capitol went in to the drug unit and stated that we had to share our frequencies with two other companies and that our pages would not go through all the time. Out of nine minutes we would only be on the air about three minutes and in the future if they stayed with RAM-PAGE they would have trouble with busy signals. They also stated we were not licensed for the area's shown on our map.

I declare under penalty of perjury that the foregoing is true

Declaration of Debbie Paugh

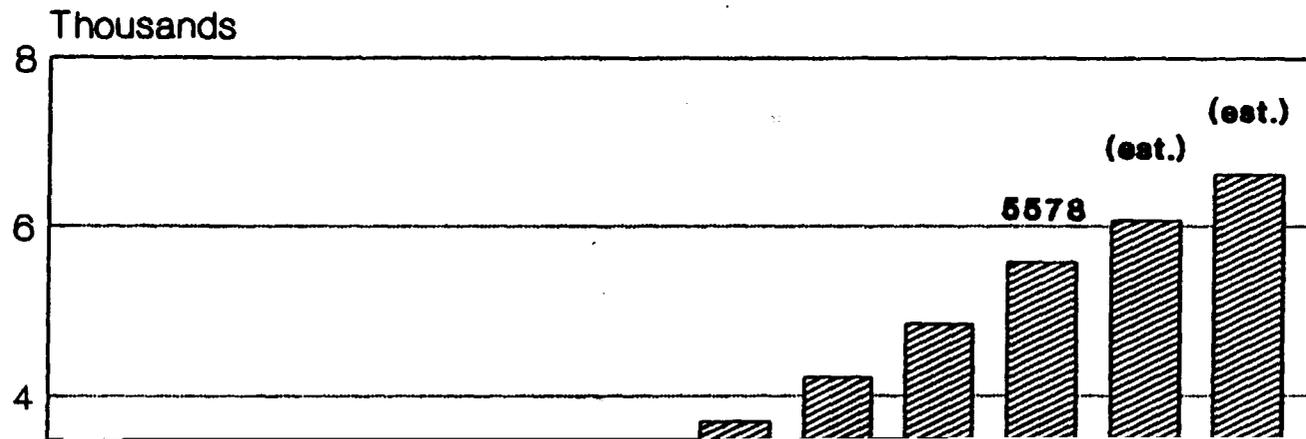
I, Debbie Paugh, being of at least 21 years of age and a citizen of the United States, do hereby declare under penalty of

Declaration of Mary Reams - Bailey

I, Mary Reams - Bailey, being of at least 21 years of age and a citizen of the United States, do hereby declare under penalty of perjury as follows:

1. I am currently employed by RAM Technologies, Inc. and serve in the capacity of outside Marketing Representative for its RAM-PAGE division.

Pagers on System Shown By Type



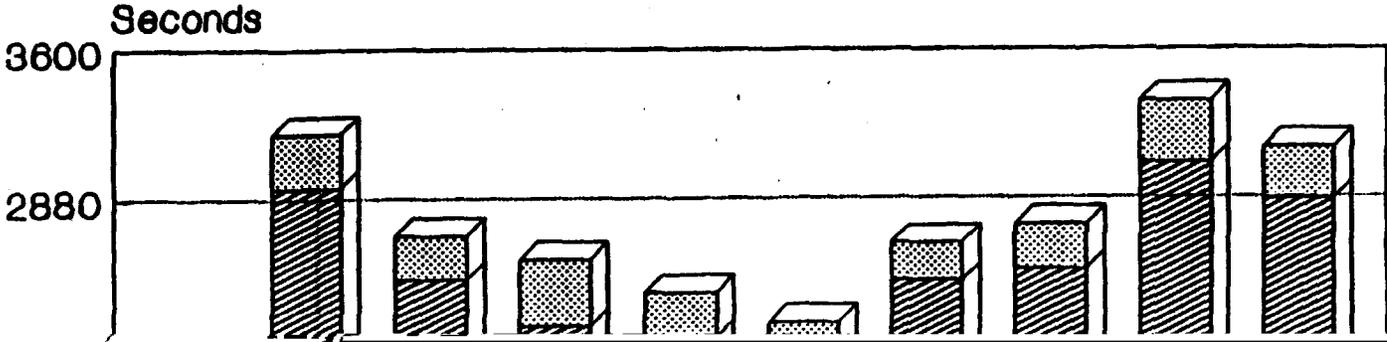
Channel Usage by Pager Type

Voice
1872



BUSV

Traffic Study



Hour	Usage			Total Usage	Utilization			Total Channel Utilization	
	Voice	Display	Busy		Voice	Display	Busy		
8:00	860	723	65	1648	23.89%	20.08%	1.81%	45.78%	
9:00	1762	1172	258	3192	48.94%	32.56%	7.17%	88.67%	
10:00	1531	956	213	2700	42.53%	26.56%	5.92%	75.00%	
11:00	1202	1057	325	2584	33.39%	29.36%	9.03%	71.78%	
12:00	1074	1129	218	2421	29.83%	31.36%	6.06%	67.25%	
13:00	988	1123	163	2274	27.44%	31.19%	4.53%	63.17%	
14:00	1210	1265	184	2659	33.61%	35.14%	5.11%	73.86%	
15:00	1399	1132	217	2748	38.86%	31.44%	6.03%	76.33%	
*** 16:00	1872	1175	303	3350	52.00%	32.64%	8.42%	93.06%	***
17:00	1741	1128	254	3123	48.36%	31.33%	7.06%	86.75%	

A F F I D A V I T

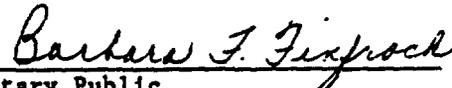
I, Robert A. Moyer, Jr., do hereby declare under penalty of perjury that the attached Capitol Paging advertisement is an exact copy of the advertisement on Page 193 of the C & P Telephone Directory for Huntington W.V. and Vicinity - January, 1990 - December, 1990 issue.


Robert A. Moyer, Jr.

STATE OF KENTUCKY:

COUNTY OF BOYD:

Sworn and subscribed before me this 28th day of March, 1990.


Notary Public

My commission expires 3/21/94.

RAM-PAGE

FOR YOUR COMMUNICATION NEEDS
SUPERIOR QUALITY AND SERVICE

LOCALLY OWNED & OPERATED

- Local & Wide Area Up To 100 Miles From Huntington
- Nationwide Paging Available
- 24 Hour Emergency Service
- "Free Loaner Pagers"
- State of the Art Equipment
- Electronic Voice Messaging
- Quantity Discounts



522-1RAM

WEST V

State considers

Associated Press

CHARLESTON — The Caperton administration is considering increased premiums for government agencies as one way to keep the state health insurance program financially stable, the program's director said Wednesday.

Sally Richardson, executive director of the Public Employees Insurance Agency, spent nearly two hours before the House Finance Committee outlining how the agency is

spending its money and how changes have been made to cut costs down.

The agency will be faced with a growing list of additional needs by the end of the fiscal year under projections.

She also outlined options the administrator has in addition to funding for the next year. The agency had previously

Groundwater bill cleared

Associated Press

CHARLESTON — A bill to guarantee clean groundwater cleared its first hurdle Wednesday when the House Judiciary Committee approved the legislation after nearly two hours of discussion.

The bill, the major environmental focus of the session, is essentially the same as a measure passed by the House of Delegates last session, but it was approved by the Senate during the 1980 session.

Under the bill, the state Division of Natural Resources director would have responsibility for setting standards for groundwater quality and for issuing permits for any project that would threaten groundwater supplies. The DNR director also would be able to set fees for those permits.

The House leadership Speaker Chuck Canale sponsors, and is opposed by oil and gas industry. Elsewhere, seat-belt legislation was approved Wednesday.

Gov. Gaston Caperton legislation that would limit power of others, while two senators expressed that would prohibit for abortions.

Caperton also introduced a number of bills dealing with the coal and gas industry. McDermott Caperton Group before becoming but put his holdings in after taking office. The next bill passed

spatch concerning Ashland Oil's use of the meeting room in the Cereus-Kenova Public Library on March 21.

It was clearly stated and made public (reported in the Herald-Dispatch March 21) that the meeting was by invitation only and the reasons for that decision. However, I was assured by Dan Lacy, vice president of corporate communications for Ashland Oil, that no one had been refused and that no one would be turned away. To be entirely factual, no one asked to be admitted who was not invited.

Any opposing viewpoint groups wishing to use the meeting room to present their position need only con-

This selection is in furtherance of a feasibility study aimed at consolidating our Identification Division operations and building a state-of-the-art automated fingerprint identification system.

A number of factors were considered in making this decision, including the Clarksburg area's proximity to Washington, D.C., nearby availability of schools with computer, science and engineering programs, accessibility to major highways, an expanding airport with direct air service to Washington, D.C., and a tri-county population base of over 200,000. The relocation project is contingent upon the FBI receiving ade-

I appreciate your providing me your insight into why Huntington would have been an excellent choice, and I want to assure you that your fine city was given consideration in the study.

William S. Sessions
director

Federal Bureau of Investigation

Given backs education

To the editor:

I think it's deplorable that the teachers picketed Phyllis Given's fund-raising dinner Friday evening. Phyllis has been a friend of educa-

voting record which is publicly documented.

As to the activists at her dinner Friday night, it is my understanding that a number of the pickets were from Cabell County. What difference does it make to teachers from outside the county who wins the upcoming race for Cabell County Commission?

Fortunately, Phyllis has many friends who came through for her that over 200 dinners were served and the pickets did not deter from evening's remarkable success.

JoAnn F
13 Campbell L

before the
Federal Communications Commission
Washington, D. C. 20554

FCC 81-112
29085

In re Applications of)

A, F & L TELEPHONE)

For renewal of license of)
Station KCC480, operating)
on frequencies 454.025 and)
152.210 MHz in the Domestic)
Public Land Mobile Radio)
Service at Leominster,)
Massachusetts)

File No. 23145-CD-R-79

RIVERS ASSOCIATES, INC.)

For Construction Permit for)
a new station to operate on)
frequency 454.025 MHz in the)
Domestic Public Land Mobile)
Radio Service at Fitchburg,)
Massachusetts)

File No. 21501-CD-P-79

MEMORANDUM OPINION AND ORDER

Adopted: March 12, 1981 Released: March 12, 1981

renewal application. In a Public Notice of May 7, 1979, Report No. 961-A, the Bureau announced its rescission of A, F & L's renewal grant without setting forth its reasons. On the May 14, 1979, Public Notice, Report No. 962, the Rivers application was listed as having been accepted for filing. The Chief, Mobile Services Division (MSD), by letter of May 17, 1979, vacated the rescission of the grant of the A, F & L renewal. Public Notice of the vacated rescission appeared on May 21, 1979 in Public Notice Report No. 963-A. On June 13, 1979 A, F & L filed a petition to dismiss or deny the Rivers application.

DISCUSSION

4. The parties seek reconsideration of virtually every step taken thus far. For clarity, we will begin with the decision to rescind the grant and the subsequent letter vacating that rescission. We will then look at the propriety of a renewal grant under these circumstances. Finally, we will consider the procedural issues related to the Rivers application.

5. We find that the staff's action rescinding its earlier grant of the A, F & L renewal application was consistent with our rules and entirely appropriate because it appeared that the grant might not promote the public interest. See, 47 U.S.C. § 309. We note that the staff has authority to set aside any action it takes within 30 days of the public notice announcing the action pursuant to Section 1.113 of the Commission's Rules. ^{1/} The staff's action here was consistent with this rule even though the Public Notice did not set forth a reason for the rescission and the licensee did not receive an explanation until later when the MSD vacated its action setting aside the grant. ^{2/}

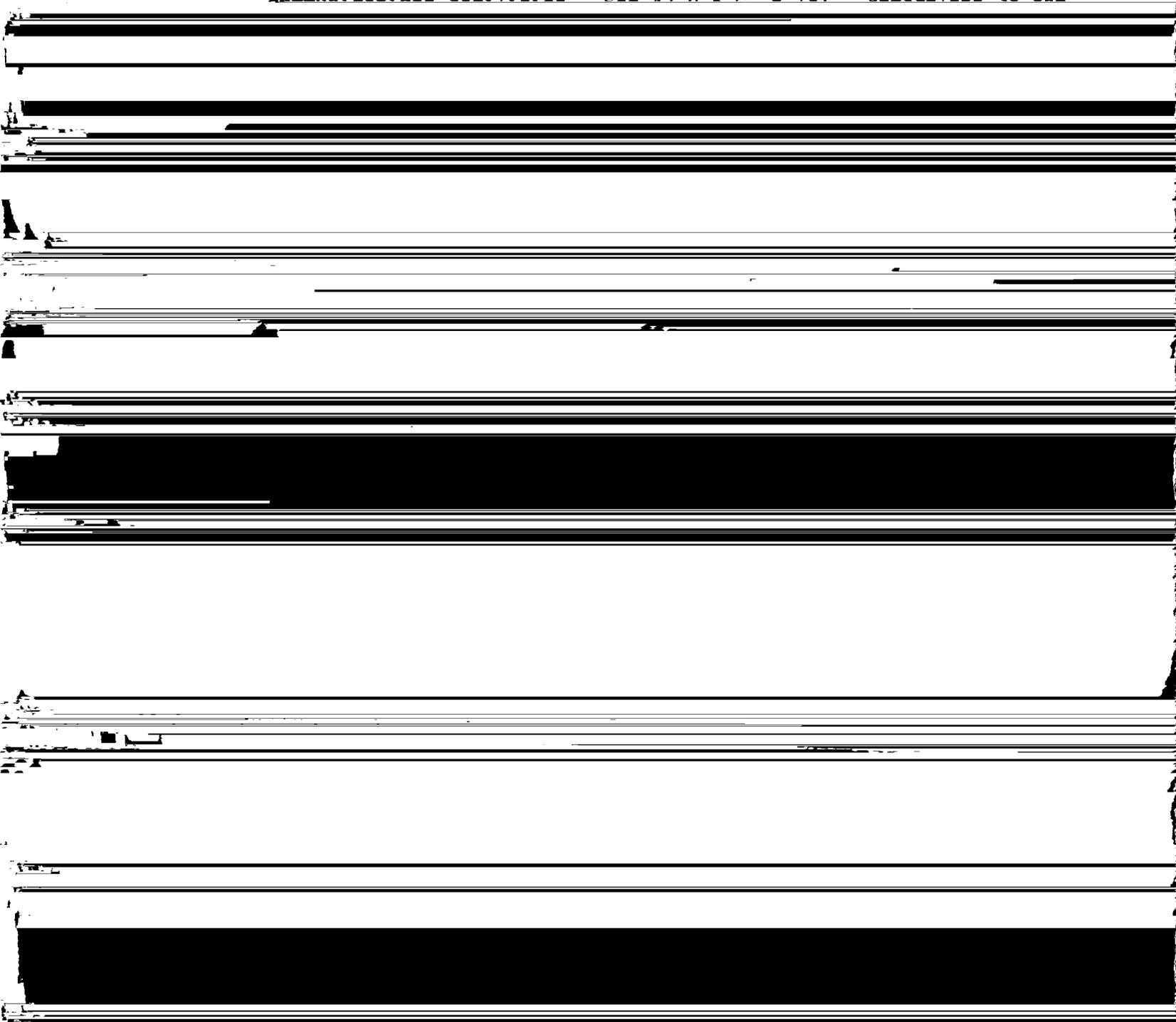
6. The Commission has broad discretion to set aside its own actions pursuant to Section 1.113 of the Rules. The power of the Commission to reconsider its actions has been held to be inherent in its power to decide. See Albertson v. FCC, 182 F. 2d 397, 399 (D.C. Cir. 1950). The setting aside of a grant under Section 1.113 of the Rules is different from the revocation of a license under Section 312

^{1/} 47 C.F.R. Section 1.113(a) provides:

Within 30 days after public notice has been given of any action taken pursuant to delegated authority, the person, panel, or board taking the action may modify or set it aside on its own motion.

^{2/} The present Section 1.113 replaced the former Section 1.87, which

of the Communications Act of 1934, as amended. 3/ During the 30-day period after a grant is made, the Commission may, on its own motion, restore the grantee of a license to "applicant" status. 4/ While the Commission may not act arbitrarily or capriciously in rescinding a grant, it is clear that the staff's action in this proceeding was reasonable. Rivers alleged that A, F & L's license renewal should be denied for non-use of a frequency. This allegation, supported with specific, documented information, was a serious charge related directly to our primary function of promoting efficient use of radio communications facilities. See 47 U.S.C. § 151. Regardless of the



9. Next, we consider Rivers' objections to renewal of the A, F & L license. Rivers charged A, F & L with nonuse of frequency 454.025 MHz and with lack of candor in reporting usage on that frequency. Specifically, Rivers alleged that monitoring of frequency 454.025 MHz between October 1978 and April 1979 showed a lack of regular usage of that channel. In fact, for a period of four months prior to the filing of the A, F & L application (October 1978 through February 1979) no transmissions, other than periodic and sporadic station identification and time announcements totalling 27 minutes of air time, were made on that frequency. In addition, Rivers charged that frequency 454.025 MHz was completely out of operation for at least the period of October 29, 1978 through November 30, 1978 in contravention of Section 22.303 of our Rules which governs discontinuance, reduction or impairment of service.

10. In response, A, F & L did not dispute the accuracy of the Rivers charges. Instead, A, F & L argued that the charges included in the Rivers informal objection were based on information obtained in violation of two federal statutes: 18 U.S.C. § 2511 and 47 U.S.C. § 605. Thus, A, F & L argued, the communications monitored and any "fruits" thereof, must be excluded from evidence in the present licensing proceeding. We will address these arguments below

11. Section 605 of the Communications Act, as amended, 47 U.S.C. § 605, prohibits interception of a "radio communication," which is defined in Section 3(b) (insofar as is relevant here) as the "transmission by radio of . . . signals . . . and sounds of all kinds." 47 U.S.C. § 153(b). If there is no transmission of a signal or sound, then the mere listening in vain for such a signal or sound does not violate Section 605. The last sentence of Section 605 states that communications "for use of the general public" are excluded from the section's privacy protection. See, In the Matter of James Reston, Jr., 72 FCC 2d 662, 666-668 (1979). All that Rivers intercepted was 27 minutes of time announcements and station identification transmissions. These interceptions by Rivers were not personal or private point-to-point transmissions between individual parties which are protected by Section 605, but instead they were transmissions commonly understood to be intended to be received and used by the general public. Accordingly, there was no Section 605 violation of Rivers. 6/

6/ Because of the foregoing conclusion, it is not necessary to reach other issues under Section 605, including whether Rivers divulged any communications for "his own benefit" and whether its divulgence to FCC law enforcement officials qualifies Rivers for the "law enforcement exemption" in United States v. Hall, 488 F.2d 193 (9th Cir. 1973).

12. A, F & L also alleges that Rivers' monitoring was a violation of the Federal wiretap laws, specifically, Section 2511, 18 U.S.C. § 2511, and that under Section 2515, 18 U.S.C. § 2515, any information gained through that monitoring may not be used in an administrative proceeding. We need not decide whether the Rivers' monitoring violated Section 2511 since we do not base our conclusion regarding A, F & L's need for frequency 454.025 on that information. Rather, we arranged for the Commission's Field Operations Bureau to conduct two field inspections of Station KCC-80 in

identification and time announcements which Rivers intercepted were radio-to-radio communications and did not involve landline telephone reception. The Ninth Circuit has held that, as a matter of law, such radio-to-radio communications are not communications in which the parties have a reasonable expectation of privacy

A, F & L application. 8/ We believe the timeliness of the Rivers filing is dependent on the validity of our rescission of the initial grant of the A, F & L renewal license. To rescind is to void; thus our reinstatement of the earlier rescission renders the original grant without effect. As a result of this rescission, the full 60 day filing period, permitted by § 22.31(b), became operative. The Rivers application is thereby entitled to comparative consideration with the A, F & L application because it was filed by the sixtieth day after the A, F & L was put on Public Notice as being acceptable for filing. As noted above, we have determined that our rescission was proper and the letter vacating that rescission was incorrect.

8/ Our "cut-off" rule for determining the timeliness of subsequently filed mutually exclusive applications, 47 C.F.R. Section 22.31(b), provides:

An application will be entitled to comparative consideration with one or more conflicting applications only if:

- (1) The application is mutually exclusive with the other application; and

Accordingly, we find that Rivers application was timely filed and is electrically mutually exclusive with the A, F & L renewal application. 9/

17. A, F & L also charges that Rivers lacks the character to be a Commission licensee because of its monitoring of A, F & L's transmissions and that the need showing included in Rivers' application is inadequate. 10/ First, as discussed above, we have concluded that Rivers' monitoring did not violate § 605 of the Communications Act, the statute by which we primarily measure our licensee's conduct to